

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Cr1.MC.No. 4022 of 2015 ()

PROCEEDINGS BEARING NO.2015/2122/12/S2 OF THE DISTRICT
MAGISTRATE, WAYANAD

PETITIONER:

RAJENDRANATH V., AGED 56 YEARS,
S/O.SADASIVAN, RESIDING AT "NATH", THONDAYADU,
P.O.CHEVARAMBALAM, KOZHIKODE DISTRICT, PIN - 673 014.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. THE DISTRICT MAGISTRATE,
WAYANAD - 673 121.

3. THE KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS ENVIRONMENTAL ENGINEER,
DISTRICT OFFICE, WAYANAD - 673 121.

4. THE EXECUTIVE ENGINEER,
PWD BUILDINGS DIVISIONS, KALPETTA, WAYANAD.

5. THE DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD DIVISION, KALPETTA, WAYANAD - 673 121.

6. THE DISTRICT SOIL CONSERVATION OFFICER,
WAYANAD - 673 121.

7. THE TAHSILDAR,
VYTHIRI - 673 576.

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8. THE VYTHIRI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PIN - 673 576.

9. THE GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT, WAYANAD - 673 121.

R1 BY ADV. PUBLIC PROSECUTOR SMT.SAREENA GEORGE
R3 BY ADV. SRI.B.PRASANTH, SC, POLLUTION CONTROL BOARD
R3 BY ADV.SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL
BOARD
R5 BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER
FOR FOREST

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

DSV/23/12/15

Cr1.MC.No. 4022 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1. COPY OF THE SALE DEED EXECUTED IN FAVOUR OF THE PETITIONER DATED 23.02.2013.

ANNEXURE A2. COPY OF THE BUILDING PERMIT HELD BY THE PETITIONER AND ISSUED BY THE SECRETARY, VYTHIRI GRAMA PANCHAYATH DATED 04.12.2012.

ANNEXURE A3. COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE FIRE AND RESCUE SERVICES DATED 14.02.2013.

ANNEXURE A4. COPY OF THE ORDER ISSUED TO THE PETITIONER BY THE DISTRICT MAGISTRATE, WAYANAD DATED 30.01.2015.

ANNEXURE A5. COPY OF THE ORDER DATED 31.01.2015.

ANNEXURE A6. COPY OF THE ORDER DATED 16.02.2015 OF THE DISTRICT MAGISTRATE, WAYANAD.

ANNEXURE A7. COPY OF THE CERTIFICATE AND REPORT ISSUED BY ZIGMA TESTING SOLUTIONS.

ANNEXURE A8. COPY OF THE CONSENT ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE PETITIONER.

ANNEXURE A9. COPY OF THE REPORT SUBMITTED BY THE EXECUTIVE ENGINEER, PWD BUILDINGS DIVISION.

ANNEXURE A10. COPY OF THE REPORT SUBMITTED BY THE DIVISIONAL FOREST OFFICER, SOUTH WAYANAD DIVISION BEFORE THE DISTRICT COLLECTOR, WAYANAD.

ANNEXURE A11. COPY OF THE REPORT FILED BEFORE THE DISTRICT COLLECTOR BY THE DISTRICT SOIL CONSERVATION OFFICER HAS ALSO.

ANNEXURE A12. COPY OF THE REPORT SUBMITTED BY THE GEOLOGIST BEFORE THE DISTRICT COLLECTOR, WAYANAD DATED 04.03.2015.

ANNEXURE A13. COPY OF THE REPORT OF THE ENVIRONMENTAL ENGINEER, WAYANAD DATED 17.03.2015.

ANNEXURE A14. COPY OF THE REPORT OF THE SENIOR SUPERINTENDENT (SUIT CELL/INSPECTION OF THE COLLECTORATE, WAYANAD).

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ANNEXURE A15. COPY OF THE ORDER PASSED BY THE DISTRICT
MAGISTRATE, WAYANAD UNDER THE DISASTER MANAGEMENT ACT, 2005.

ANNEXURE A16. COPY OF THE JUDGMENT IN W.P. (C) NO. 24873/2015 OF
THIS HONOURABLE COURT DATED 03.11.2015.

RESPONDENTS' ANNEXURES:

ANNEXURE R4(A). COPY OF THE ABOVE PROCEEDINGS
NO. 2014/21178/12/H3 DATED 30.06.2015.

// True Copy //

P.A. To Judge

DSV/23/12/15

[CR]

B.KEMAL PASHA, J.

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Crl.M.C.No. 4022 of 2015

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Dated this the 21st day of December, 2015

O R D E R

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A building permit was issued after all the legal formalities to the petitioner, for carrying out the construction of a multi-storied building having 13 floors. He has started the construction and completed the construction upto the 6th floor. While so, the District Executive Magistrate, Wayanad stepped in and initiated proceedings as if proceedings under Section 133 Cr.P.C.

2. Initially, Annexure-A4 order dated 30.01.2015 was issued, thereby directing the petitioner to stop the construction forthwith and in case of any objection to obey the order, to appear before the District Executive Magistrate

on 05.02.2015 at 3 p.m., to show cause. On 05.02.2015, the petitioner filed an explanation.

3. On the next day to the passing of Annexure-A4, the District Executive Magistrate has passed Annexure-A5 order as if he was invoking the power under Section 142 Cr.P.C., and directed the petitioner to stop the construction forthwith. Annexure-A4 and Annexure-A5 are under challenge.

4. As per Annexure-A15 dated 30.06.2015, the District Executive Magistrate issued prohibitory order for the construction of buildings having total height above 8 metres (Limited to Maximum Two Floor levels). As the building permit issued to the petitioner was also hit by Annexure-A15, the petitioner had immediately approached this Court challenging Annexure-A15 order. This Court, vide Annexure-A16 judgment, made it clear that the petitioner is free to undertake the construction in accordance with the building permit already issued.

5. The learned Public Prosecutor has pointed out that this is not a case, which is covered by Section 133 Cr.P.C. Section 133(1)(c) Cr.P.C. can be attracted only when the construction of a building is likely to occasion conflagration or explosion, and in such case it can be stopped. Apart from that, Section 133 Cr.P.C. does not contain any provision for stopping the construction work of a building by an Executive Magistrate. Here, the District Executive Magistrate has no case that the building being constructed can occasion conflagration or explosion.

6. Those Executive Magistrates mentioned in Section 133 Cr.P.C. are empowered to pass the conditional order within the meaning of Section 133(1) Cr.P.C., only in cases wherein any of the grounds mentioned under Section 133(1) Cr.P.C. is there. Here, when there is absolutely nothing to invite any of the grounds mentioned under Section 133(1) Cr.P.C., Annexure-A4 conditional order passed by the District Executive Magistrate is not legally

sustainable.

7. Regarding Annexure-A5, it seems that the learned District Executive Magistrate has exceeded his jurisdiction in passing such an order. Executive Magistrate is empowered to pass an interim order of injunction by way of immediate measure under Section 142 Cr.P.C., only when the case is covered by the provisions contained in Section 133 Cr.P.C. Matters being so, Annexure-A5 order is also not legally sustainable.

In the result, this CrI.M.C. is allowed and Annexure-A4 and Annexure-A5 orders passed by the District Executive Magistrate are quashed.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/21/12/15

// True Copy //

P.A. To Judge